Slavery and Protector Somerset; the Vagrancy Act of 1547

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In Edwards VI's first year there was passed the most savage act in the grim history of English vagrancy legislation, imposing slavery as a punishment for the refusal to work.[1] Two years later, in the immediate aftermath of the 1549 rebellion, the same Parliament repealed the act on the grounds that 'thextremitie of some [of the laws] have byn occation that they have not ben putt in ure'.[2] Perhaps because the act was so short-lived historians have said little about it. Froude and Pollard, in their different ways, attempt to defend Protector Somerset from the implied reproach of being responsible for inhuman legislation. Froude holds that 'the Protector ... may be excused therefore for having attempted a novel experiment, for having invented an arrangement, the worst feature of which was an offensive name; and which, in fact, resembled the system which, till lately, was in general use in our penal colonies'. Pollard rather uncertainly argues that 'slavery was fairly common in the sixteenth century' and that in any case an enslaved vagabond's life was certainly not harder than that of vagabonds compelled to steal, for which the penalty was hanging.[3] Other historians mention the act briefly, often suggesting the 'mitigation' theory in less sophisticated terms than Pollard, arguing that the existing penalty for vagrancy was hanging as a felon.[4] This is demonstrably incorrect. The act, then, merits more extended discussion, even though it was so short-lived. How did such an act come to be passed? What motives prompted its passing, and how did slavery come to be considered an appropriate remedy? And was it in fact, once passed, unenforceable? If so, what does this tell us about the social attitudes of sixteenth-century England? And above all, how far does the existence of the act contradict the conventional view of Protector Somerset as the friend of the poor, the would-be succourer of the oppressed?

I

Before trying to answer these questions, we need to examine the act at greater length, both in its detailed provisions and in the mode of its passing through Parliament. Of the provisions, the heart is in the following clause:

'who so ever ... man or woman' being sound of body and not possessed of a

[1] 1 Edw. VI, c. 3.
[2] 3 & 4 Edw. VI, c. 16.
[3] J. A. Froude, *History of England* (1893 ed.), IV, 310; A. F. Pollard, *Protector Somerset* (1900), p. 224, n. 1.
[4] J. D. Mackie, *The Earlier Tudors* (Oxford, 1952), p. 499; E. M. Leonard, *The Early History of English Poor Relief* (1900), pp 56–7; R. H. Tawney, *The Agrarian Problem in the XVIth Century* (1912), pp. 44–5.

sufficient private income 'shall either like a servinge man wanting a maister or lyke a Begger or after anny other suche sorte be lurking in anny howse or howses or loytringe or Idelye wander by the high waies syde or in Stretes ..., not applying them self to some honnest and allowed arte, Scyence, service or Labour, and so do contynewe by the space of three dayes or more to gither and offer them self to Labour with anny that will take them according to their facultie, And yf no man otherwise will take them, doo not offer them self to work for meate and drynk' or who leave such work before the time agreed is over, 'then everie such parsone shalbe taken for a Vagabounde' upon which the master or any other can bring them before two J.Ps. 'who hearing the proef of the Idle living of the saide parsone ... approved to them by twoo honnest witnesses or confession of the partie' are to have them branded with a V and adjudged the slave of the informant for two years. The master was to feed the slave on 'breade and water or small drynke and suche refuse of meate as he shall thincke mete'. He could 'cawse the saide Slave to worke by beating, cheyninge or otherwise in such worke and Labor how vyle so ever it be', and he could put rings of iron on the slave's neck and legs. The slave could be leased, sold, or bequeathed, as 'any other [of the master's] movable goodes or Catelles'. Runaway slaves were to be enslaved for life; on the second escape they could be put to death. On the other hand, if a slave acquired through inheritance or otherwise a 'convenient Living' he was to be discharged (except for women slaves under the age of 20 marrying without their master's consent). If no private individual cared to claim a vagabond's service, then he was to be sent to his place of birth, and there employed as a parish or corporation slave; the community having the same rights of selling him or leasing his services as a private master would. 'Clerks' (that is those males able to prove their literacy) were not to be exempted from the workings of the act; but they were to be allowed to choose their own master, if they could find one who would bind himself for £20 to keep them as a slave for a year. If they failed in their quest for a compliant and wealthy friend, they could be released from servitude after a year.[1]

There is no mention of increased penalties for subsequent offences in the act; except for the absconding slaves, who were condemned to perpetual slavery for the first offence, and death as a felon for the second. If a slave was duly released and, having failed to acquire the hoped-for liking for work in his enslavement returned to his old ways, he could presumably only be dealt with by a further two years' enslavement.[2] But this does not support the opinion that the act was a mitigation of the death penalty as a felon which the vagabond could normally expect. The vagrancy statute of 1530–1 had laid down that vagrants were to be tied naked to a cart, whipped out of the town, sent to their place of settlement and 'enjoyned upon his othe to ... put hym selfe to laboure lyke as a trewe man oweth to doo'. Only university scholars begging without per-

[1] F. Aydelotte (*English Rogues and Vagabonds* (Oxford, 1913), p. 54) believes that the act was especially severe on the ex-religious; but this clause is only the usual alleviation of punishment for those able to 'prove their clergy' by reading.

[2] A. V. Judges (ed.), *The Elizabethan Underworld* (1930), pp. xxxv-xxxvi, seems to have misread the act on this point.

mission, counterfeit shipwrecked seamen, fortune-tellers and quacks were subject to the more extreme measures of mutilation for the second or third offence.[1] (The act of 1536, which prescribed mutilation for the second offence, and hanging for the third, for all vagrants, seems to have lapsed in 1542 .[2]) Thus there is no indication that the 1547 act was a mitigation of existing penalties; indeed, its repeal in 1549 on the grounds of its being too extreme, and the revival of the 1530–1 statute instead, shows that to contemporaries a thorough whipping was regarded as a milder punishment than enslavement. [3] We cannot, therefore, see the act, in this sense at least, as a reflection of Somerset's humanity.

Another difficulty of interpretation is the question: what is a vagabond? As we see from the extended quotation above, there is not necessarily an element of wandering abroad in the definition. If we examine the vagrancy acts, it is clear that the definition of a vagabond was gradually extended in the course of the sixteenth century. The 1531 act drew a distinction between the able-bodied beggar and the vagrant unable to explain 'howe he dothe lefully gett his lyvyng' on the one hand, and the 'ydell person & no common begger' on the other.[4] In 1536 'all and every idell personne and personnes ruffelers calling themselffes servyngmen ... havying no Maisters' shall be treated as vagabonds.[5] The 1547 act itself seems to be ambiguous, perhaps intentionally; but it *can* at least be interpreted to mean that any man or woman refusing work when it was available on any terms whatever could be enslaved. Evidently in this as in so much else, the act went too far; the 1549 act modified the provision to work for meat and drink only to one to work 'for suche reasonable wages as is moste comenlye given in the parties where suche parsons shall dwell'.[6] By 1572 the definition of a vagabond as one refusing to work for reasonable wages had become normal.[7] Thus there has been a shift from treating the man refusing work as if he were a vagabond, to the concept that he *was* a vagabond. The earlier practice was part of the Tudor technique of expressing extreme disapprobation of a crime by calling it a bad name; as in the famous act declaring that poisoners should be treated as traitors.[8] Vagrancy was a useful emotive concept of this sort; Leicester Corporation, in 1553, appalled at its citizens' iniquity in helping themselves to the queen's wood, decreed that, after being punished by the country justices, they should be tried by the borough authorities, 'as valyant, stronge and sturdy vacabondes & after ...

[1] 22 Hen. VIII, c. 12, as continued in force by 28 Hen. VIII, c. 6, 31 Hen. VIII, c. 7, 33 Hen. VIII, c. 17, 37 Hen. VIII, c. 23.

[2] 27 Hen. VIII, c. 25, valid till the end of the next Parliament only; extended by 31 Hen. VIII, c. 7, but not by 33 Hen. VIII, c. 17.

[3] Miss Leonard, *op. cit.* pp. 56–7, suggests that incorrigible rogues could be punished with death. She cites only More's *Utopia* as evidence; I have been unable to trace the edition she cites, but the meaning of the text is quite clearly that vagabonds steal and are then hanged as thieves (Everyman ed. 1910, pp. 22–3, 27).

[4] 22 Hen. VIII, c. 12.

[5] 27 Hen. VIII, c. 25. Cp. also the comprehensive definition in the draft poor-law of 1535; G. R. Elton, 'An Early Tudor Poor Law' (*Economic History Review*. 2nd ser. VI (1953–4), 55–67), p. 62.

[6] 3 & 4 Edw. VI, c. 16.

[7] 14 Eliz. c. 5; cp. also 39 Eliz. c. 4.

[8] 22 Hen. VIII, c. 9.

banysshed the towne for ever'.[1] Whether in fact those refusing to work were normally considered to *be* vagabonds is a different matter. Under the comprehensive scheme introduced in Coventry in 1547 those refusing the work provided for them were to be punished and, *if necessary*, banished the city.[2] Idle persons in Lincoln in 1551 were to be given a month to leave the city.[3] As late as 1583 those refusing work in Maidstone were given a rather less severe punishment than vagabonds proper.[4] Yet if there is some popular resistance to the automatic equation of refusal of work with vagrancy, the concept is there. The 1547 act was aimed at a wider target than those bands of wandering beggars which terrorized the Tudor countryside. The latter were a useful excuse to make palatable a policy of enforced employment, and, by implication at least, to reduce still further the worker's limited ability to bargain.[5]

As for the other provisions of the act, the most striking was the treatment of children. A vagabond child, without the consent of his parents, could be claimed by any man as his 'apprentice' till the age of 24 (for men) or 20 (for women); a revival of similar provisions in the (now lapsed) act of 1536.[6] If the 'apprentice' ran away, he could be enslaved for the term of his apprenticeship. A parent or 'nourryce or other the bearer abowt of the Child' was also liable to slavery if he or she tried to entice the child away. As against these sanguinary measures, something, but very little, was done for the relief of impotent beggars. They were to be sent to their places of settlement if possible, there to be provided for by organized charity; a weekly collection in church after 'a godlie and brief exhortacion' replaced the alms-box of 1536. The leprous and bed-ridden were allowed to remain where they were, and to appoint proxies to beg for them.[7]

All in all then, the act was distinguished more by its ferocity against the worker than by its provisions for the relief of the unfortunate. Its parliamentary career, unfortunately, throws little light on its genesis; the engrossed act contains no amendments which would allow a reconstruction of the act's history in the way Professor Bindoff has done so skilfully for the Statute of Artificers.[8] It

[1] Mary Bateson (ed.), *Records of the Borough of Leicester*, III (Cambridge, 1905), pp. 75–6. Those stealing wool supplied to them for work in Lincoln were to be treated as vagabonds (J. W. F. Hill, *Tudor and Stuart Lincoln* (Cambridge, 1956), p. 67).

[2] *Coventry Leet Books* (4 parts, E.E.T.S. 1907–13), pt. III (1909), pp. 783–5.

[3] Hill, *op. cit.* p. 67.

[4] Cp. clauses 5–6 and 13 of the instructions printed by S. A. Peyton in *Eng. Hist. Rev.* XLII (1927), 254–8.

[5] On a strict reading of the act a worker could not live for a time on his savings in the hope that a better job might turn up than those currently being offered; those living on their own resources could only do so if they were derived from 'Landes or Ten*emen*tes Fees Anuityes or anny other *yerelie* Revenues or Proffittes' (my italics).

[6] This again was relaxed in 1549. Compulsory service was to continue till 15 (girls) or 18 (boys). J. P.'s could release apprentices who showed that their master treated them unreasonably (3 & 4 Edw. VI, c. 16).

[7] I can see no justification for Miss Leonard's assertion, *op. cit.* p. 57, that the act provided for the erection of cottages for the bed-ridden; merely for their continuation in such dwellings as they occupied already (s. xv).

[8] S. T. Bindoff, 'The Making of the Statute of Artificers' (in *Elizabethan Government and Society, Essays Presented to Sir John Neale*, eds. S. T. Bindoff, J. Hurstfield, C. H. Williams (1961), pp. 56–94). The last five sections of the 1547 act are certainly annexed in a separate schedule, as noted in the printed version, but merely supply omissions.

evidently originated in the three vagrancy bills introduced into the Lords on 30 November 1547.[1] These were committed for consideration by two judges (Edmund Marvin and William Shelley) and two King's Serjeants (Edward Molyneux and Edward Saunders, later Chief Justice of the Queen's Bench, and Chief Baron of the Exchequer).[2] Another bill was sent them for consideration on 3 December. The lawyers worked quickly, and an agreed bill was finally passed by the Lords 'communi omnium Procerum assensu' on 8 December.[3] Somerset was present, as were several members of the Privy Council (Riche, St John, Russell, Northampton and Thomas Seymour). Several bishops of varying theological opinion, were also present (Tunstal and Bonner, Aldridge and Day among the conservatives, Cranmer, Ridley, Barlow, Holbeach, Bird and Bush among the reformers [4]). Arriving in the Commons on 10 December as a 'Bill for Vagabonds and Slaves' it completed its third reading there by 19 December and received the royal assent on 24 December, the last day of the session.[5]

The act, then, may not have been a government measure in its origin; the slavery provisions presumably originated in one of the bills sent to the committee of lawyers, and the need for such a committee presumably argues that these were back-bench measures.[6] Nevertheless it received the approval of four prominent lawyers. Somerset's administration adopted the bill, and this in a parliamentary session in which, the Protector told the Imperial Ambassador, he wanted 'to give to the subjects a little more reasonable liberty without in any way releasing them from the restraints of proper order and obedience'.[7] Ironically its repeal took place in the session immediately following the 1549 rebellion and the fall of Somerset. How had such an extraordinary act come to be proposed and accepted in the first place?

II

One explanation would be that it was a panic measure. As Lord Holland observed in 1817, 'almost all the bad, wicked and cruel penal laws have been made on that pretence [of an emergency], and hurried in with a precipitation utterly incompatible with prudence, moderation or justice'.[8] The introduction of four vagrancy bills in the Lords simultaneously, and the fact that the Commons were considering vagrancy and gypsy bills of their own, shows that the issue was felt to be urgent in 1547.[9] So does the Privy Council's letter to the Justices in February 1547, which specially stressed their duty 'to see the vacaboundes and perturbers of the peace ponysshed, and that ev[ery] man applie

[1] *L[ords] J[ournal]*, I, 302.
[2] Edward Foss, *Judges of England* (9 vols. 1848–64), V; *D.N.B.* (Shelley, Saunders and Molyneux). To Molyneaux was also committed the 1549 act of repeal (*L.J.* I, 357).
[3] *L.J.* I, 303, 305.
[4] Using L. B. Smith's classification (*Tudor Prelates and Politics* (Princeton, 1953), pp. 305–7).
[5] *C[ommons] J[ournal]*, I, 2–3; *L.J.* I, 313.
[6] Bindoff, *op. cit.* 69.
[7] *Cal. S.P. Span. 1547–9*, p. 197.
[8] Quoted by L. Radzinowicz, *History of the English Criminal Law* (3 vols. 1948–56), I, 16.
[9] *L.J.* I, 302–3; *C.J.* I, 1–3.

himself to doe as his calling dothe requyer' [1]. But there seems to be no reason why vagrancy should be an exceptionally acute problem in 1547. The harvests of 1546 and 1547 had both been abundant, benefitting subsistence farmers on the one hand, and, through low grain prices, wage-earners on the other.[2] Certainly cloth exports slumped drastically in 1547.[3] But this should have been counterbalanced by an increased domestic demand due to low grain prices (though a certain amount of sectional unemployment among clothiers working for the continental or high-price markets may be expected). The vagrancy problem was more long-term. The boom in cloth exports of the earlier 1540's presumably did increase the amount of pasture, with damaging effect on agricultural labourers, even if not to the extent depicted by the popular preachers. The exceptionally bad harvest of 1545–6 presumably produced a good deal of vagrancy. In addition the 48,000 men who had accompanied Henry VIII to Boulogne (the largest foreign expedition in English history till that date) may not have settled back quickly to civilian life.[4] As Sir John Cheke held 'Every man is easily and naturally brought from labour to ease, from the better to the worse, from diligence to slouthfulnesse, and after warres it is commonly seene, that a great number of those which went out honest, returne home againe like roisters, and as though they were burnt to the warres bottome they have all their lyfe after an unsavery smack thereof'.[5] The Parliament of 1547 was the first since 1545. Presumably members' attitude reflects memories of 1545–6 rather than the immediate situation in 1547. The vagrancy problem was in any case sufficiently endemic for resolutions adopted then that 'something must be done' to be kept in being till 1547.[6]

Moreover, any question of an exceptionally severe emergency measure seems ruled out by the almost total lack of comment with which the act was apparently received. The Imperial Ambassador who reports at length on the events of the 1547 Parliament failed to mention the act.[7] Neither contemporary chroniclers nor their Elizabethan successors specifically mention it. It does admittedly appear in King Edward's journal for 1547 as the 'extrem law'; but the early years of the journal were written up in March 1550, soon after the act's repeal, when Edward was under Northumberland's influence.[8] None of the loquacious preachers of the period seem to have condemned it along with the other social evils of the age. In 1550 Bishop Latimer preaching before

[1] Brit. Mus. MS. Titus, B II, fos. 34–5.

[2] W. G. Hoskins, 'Harvest Fluctuations, 1480–1619' (*Agric. Hist. Rev.* XII (1964) 28–46).

[3] L. Stone, 'State Control in XVIth Century England' (*Econ. Hist. Rev.* XVII (1947), 103–20), pp 106, 119.

[4] C. S. L. Davies, 'Provisions for Armies, 1509–50' (*Econ. Hist. Rev.* 2nd ser. XVII (1964), 234–48), p. 234. It would be wrong to quote here the 100,000 men in arms in 1545, since these were mobilized for defensive service in England for a short period only (*Letters and Papers of Henry VIII*, XX, pt. I, no. 958).

[5] Sir John Cheke, *The Hurt of Sedition* (1549, repr. 1569), sigs. hii *r*-iij *r*.

[6] Cp. here too the general increase in severity of the measures of 1531 and 1536 (above pp. 534-5), and the need, if the deterrence theory was followed, to introduce a yet harsher remedy; cp. also the severity of the legislation against gypsies, ordering them to forfeit all their goods (and, from 1554–5, their lives) or leave the realm (22 Hen. VIII, c. 10; 1 & 2 Ph. & M. c. 4; 5 Eliz. c. 20).

[7] *Cal. S.P. Span. 1547–9.*

[8] *Literary Remains of King Edward VI* (ed. J. G. Nicholas, Roxburghe Club, 2 vols. 1857), I, xiii; II, 220.

the king commented on the oppression of the poor by the men of Nineveh; 'they made them slaves, peasants, villains and bond-men unto them'.[1] He went on to draw an analogy with England, but this was couched in terms of grievances about enclosure and rents; he did not mention the actual slavery which had recently been introduced (and again abolished). Harsh treatment of the vagrant, or indeed, of the idle in general, was the accepted doctrine of the age.

The whole concept of idleness, of course (outside the ranks of the gentry), offended against conceptions of social order and of the 'common wealth'. The King's Book of 1543 taught that 'all idle vagabonds and sturdy beggars which being able to get their living by labour, take such alms wherewith the poor and impotent folk should be relieved and sustained do offend against this commandment' (the eighth, against stealing).[2] Henry VIII believed that 'Many folk ... had rather live by the craft of begging slothfully, than either work or labour for their living ..., we think it right necessary that such should be compelled by one means or other to serve the world with their bodily labour, thinking it small charity to bestow otherwise alms on them'.[3] Lower down the social scale, the popular preacher Robert Crawley said of beggars who refuse to work:[4]

> And if they refuse
> to worcke for theyr meate,
> then ought they to faste,
> as not worthy to eate.

In addition, of course, there was genuine fear of groups of vagabonds terrorizing the countryside (or even the towns) and treating the exiguous forces of order with contempt. Edward Hext's complaints of 1596 that vagabonds had 'bread that feare in Iustices and other inferior officers that no man dares to call them into questyon' are well known.[5] Sir John Cheke urged on the Norfolk rebels that their proceedings 'stirre up uprores of people, hurlie burlies of vagabonds, routes of robbers'. Vagabonds would 'swarme in everye corner of the realme, and not onely lye loytering under hedges but also stande sturdely in Cities, and begge boldly at every dore, leaving labour which they like not, and following idlenesse whiche they should not'. They would 'stande in the high way to aske their almes whome ye be afraide to say nay unto honestly, least they take it away from you violently, and have more cause to suspect their strength, then pittie their neede. Is it not then daily heard how men be not onely pursued, but utterly spoyled, and few may ryde safe by the kings way, except they ryde strong, not so much for feare of their goodes ... but also for daunger of their lyfe.'[6] This, of course, was propaganda painting the probable outcome of

[1] Hugh Latimer, *Sermons* (Everyman ed.), p. 211.
[2] Quoted by L. B. Smith, *op. cit.* p. 247.
[3] *Ibid.* 204.
[4] 'One and Thyrtye Epigrammes', 1550, repr. in *Select Works* (E.E.T.S., extra ser. no. XV, 1872), p. 14.
[5] R. H. Tawney and Eileen Power, *Tudor Economic Documents* (3 vols. 1924), II, 345.
[6] Cheke, *op. cit.* sigs. dii *v*, hii *v*, hiii *r*.

continued rebellion; but the dangers it depicted were real enough.[1] Vagabonds were genuinely feared; and the equation of idleness with vagrancy proper was a useful means of inculcating respect for work.

Indeed, far from harshness to the idle being merely acceptable, it was considered a positive Christian virtue, even by those most vociferous in denouncing the conduct of the rich. The reforms in London in 1550, urged by Bishop Ridley in the hope that 'Christ should lie no more abroad in the streets', included the establishment of a house of correction so that 'the froward, strong and sturdy vagabond may be compelled to live profitably by the Commonwealth'.[2] Thomas Lever, preaching in 1550, asserted that 'the vilest person upon erth, is the lively image of almightye God', and yet 'there is never a one of these but he lacketh, eyther thy charitable almes to relieve his neede, orels thy due correction to punysh his faute'.[3] Martin Bucer, a favourite theologian of Somerset's circle, argued that magistrates ought to execute 'that lawe off God, and off the Emperour Valentynyan, whiche forbiddeth that any man be suffred to beg, and commandeth that those that be able to labour, shoulde be forced to labour'.[4] And, of course, the doctrine that increased penalties for vagabonds were an act of charity, a necessary concomitant to increased poor relief, remained important into the next century and beyond.[5]

This, of course, was not an exclusively Protestant conception. The same trend towards a more 'practical' approach to poor relief, in the sense of the centralization of alms-giving, the organization of the distribution of charity, and greater penalties for begging, is to be found in the famous schemes of Ypres and Rouen, and in the attempts of Charles V and Francis I to extend them to their domains as a whole.[6] As we have seen, the theologically conservative Bishops Tunstal, Bonner, Aldridge and Day, voted for the 1547 bill. But there was obviously a countervailing trend within the Catholic tradition which stressed the salvation of the donor rather than the effect on the recipient, and thus tended to encourage indiscriminate almsgiving; the mendicant orders opposed the Ypres scheme, and the Church in Spain opposed Charles V's proposals to extend it to his other realms.[7] The advanced Protestantism of the ruling circles in Edwardian England, the disrepute into which the monastic ideal had fallen, was thus favourable to a more practical, perhaps a more secular approach to poor relief; and, with it, a harsher eye for the vagabond.[8]

[1] A. V. Judges, *op. cit. passim* and especially pp. xv-xvi.

[2] M. Leonard, *op. cit.* pp. 32–3.

[3] *Sermons* (ed. E. Arber, 1895), p. 78.

[4] Quoted C. Hopf, *Martin Bucer and the English Reformation* (Oxford, 1946), p. 116.

[5] Cp. Bacon, 'the best effect of hospitality is to make the kingdom if it were possible capable of that law "that there be no beggar in Israel"; for it is that kind of people that is a burthen, an eye-sore, a scandal, and a seed of peril and tumult in the state'. Therefore, 'the best sort of hospitals have houses of relief and correction... where the impotent person is relieved, and the sturdy beggar buckled to work' (*Life and Letters*, ed. J. Spedding (7 vols. 1861–74), IV, 252). Cp. Samuel Hartlib's attitude (Margaret James, *Social Policy during the Puritan Revolution* (1930), p. 276).

[6] F. R. Salter (ed.), *Some Early Tracts on Poor Relief* (1926).

[7] *Ibid.* pp. 32–5, 104–5.

[8] L. B. Smith, *op. cit.* argues that the reformers condemned avarice and greed 'not because they were harmful to the state, but because they involved a loss of grace which was tantamount to everlasting torment and damnation'. Latimer and Lever would obviously hold that spiritual matters are more important than temporal; but their sermons show clearly a concern with the material condition of the poor as an end in itself, even if a subsidiary one.

Nevertheless, it is not the *fact* of harshness which we have to explain, but the peculiar form which that harshness took, enslavement to an individual. First, we must consider some precedents; not exactly precedents for slavery proper on the 1547 model, but at least approaches to it. A draft poor-law scheme of 1535 had proposed a public works programme for the relief of the unemployed, and had included provision that 'it shall be lawfull to all men to arrest [a beggar] and bryng hym to the next workes'.[1] If he refuses to work, or if he by 'contynuall loitryng, or of any sedition, unlawfull meanes, corrupt councell or practise ... make murmeracon grudge or insurrection in and emong the rest of the laborers', he is to be branded, and on the second offence hung as a felon.[2] These public works, then, were a form of penal servitude. In 1545 Henry VIII had proclaimed that 'ruffians, vagabonds, masterless men, common players and evil-disposed persons' were to be sent to the galleys.[3] A similar proclamation of 1549 is more explicit; those convicted of spreading rumours of military defeat, are to be sent to the galleys 'there to row as a slave or forcery during the King's Majesty's pleasure'.[4] All this, of course, was forced labour in the interests of the state, as were the later houses of correction and the occasional Elizabethan use of galley-slaves.[5] Nevertheless, they help to pave the way for the introduction of private slavery.

Another factor here was what one may perhaps call the More tradition; that it was better both for condemned criminals themselves and for the state if they were set to work for the public good rather than hanged. In the example quoted in *Utopia* these communal slaves could be hired out to individuals who could chastise them; but they could only be hired, apparently, for the day.[6] Likewise Thomas Starkey had proposed forced labour on public works as a punishment for thieves in his *Dialogue between Pole and Lupset*.[7] The men sent to the galleys in 1586 were criminals condemned to death, on the grounds that this 'kind of punishment will both terrify ill-disposed persons from offending, and make thos that hazard them selves to offend, in some sorte proffitable to the common welthe'.[8] And, of course, this tradition persisted among penal reformers as long as capital punishment remained the penalty for minor crimes.[9] An element of the More tradition is found in the preamble to the 1547 act which declares that although 'Idle and Vagabounde persons being unprofitable membres ... of the Comen wealthe' deserve punishment 'by deathe, whippinge, emprysonement or with other Corporall payne' it would

[1] Brit. Mus. Royal MS. 18 C, vi, fos. 4*v*-5*v* (see the account of the draft by G. R. Elton, *op. cit.*)

[2] *Ibid.* fos. 5–6.

[3] *Tudor Royal Proclamations*, ed. P. L. Hughes and J. F. Larkin (New Haven, 1964), I, no. 250.

[4] *Ibid.* no. 329; cp. E. R. Adair, 'English Galleys in the XVIth Century', *Eng. Hist. Rev.* XXXV (1920), 497–512. Cp. P.R.O. E 351/2588 (naval accounts) of 1547 – rewards paid to 'diverse persons that made serche for the Gallyslaves when they were runneawaye'.

[5] Adair, *ibid.*; A. V. Judges, *op. cit.* pp. xxxvi-vii.

[6] *Utopia* (Everyman ed.), pp. 31–34.

[7] Ed. J. M. Cowper (E.E.T.S. Extra Ser. XII, 1878), p. 197.

[8] *Egerton Papers* (Camden Soc. 1840), pp. 116–17. This is a nice comment on the inefficacy of capital punishment.

[9] Cp. H. N. Brailsford, *The Levellers and the English Revolution* (1961), pp. 253–4; Margaret James, *op. cit.* p. 330; Radzinowicz, *op. cit.* I, 32–3. Radzinowicz comments that such schemes were invariably rejected as contrary to the dignity of the English people.

be 'much to be wisshed and desired' that they should 'be made proffitable and doo service'. In this, of course, the act looks forward to the Elizabethan houses of correction. Slavery may be seen as a method which would, it was hoped, produce the effect of penal servitude while sparing the trouble of establishing any machinery to administer it.

Even so the theory of penal servitude is a far cry from enslavement to an individual. But the transition was helped by legal doctrine. The law of villeinage is the key here. Under the influence of Roman law in the twelfth and thirteenth centuries the doctrine had been formulated that there were no degrees of personal unfreedom. Naturally in practice a villein was distinct from a slave; he enjoyed the protection of manorial custom, while increasingly the royal courts themselves softened the doctrine which had excluded serfs from their benefits, until it was held that the villein was free *vis-à-vis* all men except his lord.[1] (Whether a slave would have been in a similar position is not clear from the 1547 act, but I presume not.) Nevertheless, it was still held in the sixteenth century that the villein had no right to personal property, at least as against his lord. In *Doctor and Student*, for instance, the Doctor claimed that the villein could not grant property, because he had none of his own; the Student preferred the more moderate doctrine that he could do so, unless the lord had seized the goods beforehand. The Doctor admittedly had doubts whether such a doctrine is consistent with Christian charity, but there is no doubt of its legal validity.[2] In the case of Netheway *v.* Gorge of 1534, the Lord of the Manor refused payment for an ox taken from a man he alleged to be his bondman. The commissioners charged with the investigation of the case agreed that the bondman had no right to property as against his lord, though they did their best to bring pressure on the lord to make an *ex gratia* payment.[3] Later in the century Sir Thomas Smith went so far as to equate the villein in gross with the Roman 'servus' and the 'villein regardant' with the Roman 'adscriptus glebae'. True, he goes on to say 'of the first I never knewe any in the realme in my time; of the seconde, so fewe there be, that it is not almost worth the speaking' but this is demonstrably incorrect.[4] The legal doctrine of serfdom was, then, still very strong in the sixteenth century; and the law, failing to distinguish theoretically between serf and slave, facilitated rather than prevented the introduction of a concept of slavery as punishment.[5]

It is worth mentioning here that Smith referred even to apprenticeship as 'vera servitus', though 'only by covenaunt and for a time'; the apprentice could only work for his master's profit, he was unable to employ his own

[1] W. G. Holdsworth, *History of English Law*, III, 491–510; F. Pollock and F. W. Maitland, *History of English Law* (2nd ed. 2 vols. 1898), I, 412–32; A. Savine, 'Bondmen under the Tudors' (*Trans. Roy. Hist. Soc.* 2nd ser. XVII (1903), 235–86), pp. 253–6.

[2] C. St Germain, in *Doctor and Student* (ed. W. Muchall, Cincinnati, 1886), pp. 153–4, 236–9.

[3] I. S. Leadam (ed.), *Select Cases in the Court of Requests, 1497–1569* (Selden Soc. XII, 1898), pp. lxix-lxxi, 42–6, Cp. Burde *v.* Earl of Bath (*ibid.* pp. lxxi-ii, 48-58).

[4] Sir Thomas Smith, *De Republica Anglorum* (ed. L. Alston, Cambridge, 1906), pp. 130–1; cp. Savine, *op. cit.*

[5] Of course a different deduction could be drawn here; Hargrave argued in Somersett's case (1772) that since villeinage was the only form of servitude known to English law, any man who was *not* a villein was *ipso facto* free (quoted by Savine, *op. cit.* p. 256).

capital, he had to sleep in his master's house, was unable to marry without leave, had to perform servile offices, and had to obey and suffer correction, in return for food and clothing, and instruction in his trade.[1] Again, Smith is going rather too far in making the absolute equation between apprenticeship and servitude; what, in this case, would be the point of the 1547 act's condemning runaway apprentices to slavery? Nevertheless the point is an interesting one, and may remind us that slavery itself was not so very different, in theory or in practice, from the compulsory apprenticeship of the young (or indeed, of compulsory service for the rest of the community, except those of private means) of Elizabethan social legislation.

Yet while the concept of slavery existed in the Common Law, its use as a punishment was, in the sixteenth-century conditions, an innovation contrary to the Law's traditions. Mention of Smith, however, provides a clue to the way in which that tradition could be disregarded. Smith was, of course, closely associated with Somerset. He had entered the Protector's service in February 1547, became clerk of the Privy Council in March, and Master of Requests in Somerset's personal court. He was member for Marlborough in the 1547 Parliament, apparently under Somerset's aegis. In December 1547 he became Provost of Eton, in January 1548 Dean of Carlisle, and in April Second Secretary to the King.[2] He was also a distinguished Roman lawyer, having studied at Padua and in France, and was the first Regius Professor of Civil Law at Cambridge; he was also eminent as a Greek scholar. Later in life, of course, he was to distinguish himself by a spirited assertion of the superiority of English institutions over those of countries under the Civil Law. Nevertheless, it is possible that in 1547 his attitude was much less friendly to the tradition of the Common Law.[3] Certainly there is evidence of some hostility between students of the newly refurbished Civil Law, stripped of its medieval accretions and restored to Roman purity, and Common Lawyers.[4] Somerset himself, of course, attempted to further the study of the Civil Law in the universities; Smith's part in these schemes, and in that to establish a 'College of the Civilians' in London, was important.[5] Humanists in general tended to favour the Civil Law, as classical and logical, as against the 'Norman barbarities' of the Common Law.[6] And, of course, a well-known Roman law text provided a precedent for the 1547 Act: 'in the case of those who are lazy and not to be

[1] Smith, *op. cit.* p. 137. Cp. too Sir Thomas Elyot's *Dictionarie* (3rd ed. 1559) which gives: 'Seruus... a seruant, properlye whyche is compelled to serue, as bondmen or apprentises doone.'

[2] M. Dewar, *Sir Thomas Smith* (1964), pp. 25–32.

[3] His inaugural lecture at Cambridge, of course, paid tribute to the dialectical skill of the Common Lawyers, but the laws themselves he described as 'barbaras tantum et semigallicas' (quoted, by F. W. Maitland, *English Law and the Renaissance* (Cambridge, 1901), pp. 89–90).

[4] Cp. the well-known complaint of the Common Lawyers against the Lord Chancellor in 1547 (*Acts of the Privy Council, 1547–50*, pp. 48–59).

[5] J. B. Mullinger, *The University of Cambridge*, II (1884), 132–8; Dewar, *op. cit.* pp. 41–2; C. E. Mallet, *A History of the University of Oxford* (3 vols. 1924–7), II, 83–4.

[6] Cp. the attack put into Pole's mouth by Starkey, *op. cit.* pp. 192–5 (quoted by Maitland, *op. cit.* pp. 41–5). Cp. also the civil law interests of Richard Morison and Henry Cole, and the fact that Sir John Cheke, another member of the Somerset-Cecil circle, took himself off during his exile of 1554 'philosophically to course over the Civil Law' at Padua (W. G. Zeeveld, *Foundations of Tudor Policy* (Cambridge, Mass. 1948), pp. 80, 118, 244).

pitied on account of any physical debility ... the zealous and diligent informer shall obtain the ownership of these beggars who are held bound by their servile status, and ... the right to perpetual colonate [forced labour] of beggars born free'.[1] Add to this the fact that the 'Commonwealth Party' had little liking for the technicalities and traditions of the Common Law, and sometimes displayed a marked proclivity to produce simpliste solutions with little regard for what was practically possible in sixteenth-century England.[2] The various legal reforms presented for Thomas Cromwell's consideration, which cut clean across the accepted development of the law and the constitution, seem to have stemmed from the Commonwealth party.[3] Such schemes had been pigeon-holed by the constitutionally cautious and eminently pragmatic Cromwell. 1547, however, saw the advent of a government in which intellectuals in general, and members of the 'Commonwealth Party' in particular, enjoyed an unusual degree of influence. Within these circles there existed a concatenation not so much of enemies of the Common Law, but of men inclined to reason *a priori*, of men who set little store by the traditions of English government, the reverence for precedent on which the Common Law was based; above all, of men with little conception of what was realistically possible in contemporary society. The government's acceptance of the 1547 act is in these circumstances readily explicable.

This hypothesis is strengthened if a suggestion of Professor Bindoff's is correct; namely, that the 'Considerations delivered to Parliament' in 1559 were produced by the committee nominated by the Privy Council on 23 December 1558.[4] The first of these 'considerations' is a suggestion that the 1547 statute should be 'revived and dulye put in execucion, for ever with a new addition qualiffyinge the extremytie therof'.[5] The committee consisted of Nicholas Bacon (as Lord Keeper), the two Chief Justices, the Sergeants-at-Law, Gilbert Gerard (Attorney-General), Richard Weston (Solicitor-General), Sir Thomas Smith, and Richard Goodrich. The two Chief Justices were soon removed;[6] one of them was Edward Saunders who had been a member of the 1547 committee. Of the others Nicholas Bacon, Smith, Gerard and Goodrich were all Cambridge-trained lawyers; Bacon, Smith and Goodrich had been influential members of the Edwardian government, part of that Cambridge set of men of Protestant and humanist tendencies, of whom the most eminent was

[1] *Theodosian Code* (trans. and ed. C. Pharr, Princeton, 1952), Bk. XIV, tit. 18; this provision was reproduced in the Justinian code (*Corpus Iuris Civilis* (Berlin, 1892), II, 435 (Bk. XI, tit. 26)).

[2] Henry Brinkelow, 'Complaynt of Roderyck Mors' (E.E.T.S. Extra Ser. XXII, 1874, pp. 20–6; Hugh Latimer, *Sermons* (Everyman ed.), pp. 106–9; E. W. Ives, 'The Reputation of the Common Lawyers in English Society, 1450–1550' (*Univ. of Birmingham Hist. J.* VII (1959–60), 130–161).

[3] T. F. T. Plucknett, 'Some Proposed Legislation of Henry VIII' (*Trans. Roy. Hist. Soc.* 4th ser. XIX (1936), 119–44); L. Stone, 'The Political Programme of Thomas Cromwell' (*Bull. of the Institute of Historical Research*, XXIV (1951), 1–18; G. R. Elton, 'Parliamentary Drafts, 1529–40' (*Ibid.* XXV (1952), 117–32).

[4] Bindoff, *op. cit.* p. 81.

[5] Cecil Papers, 152/96. I must thank Miss Clare Talbot for checking the MS. The summary given in H.M.C. Cecil, I, 162, reproduced Tawney and Power, I, 325, is seriously misleading in its implication that the statute 'be revived with additions'.

[6] Bindoff, *op. cit.* p. 81.

William Cecil.[1] If then the 'considerations' were in fact produced by this group, it can be deduced that Somerset's government had not regarded the 1547 act with any disfavour; but rather had welcomed it as a useful means of suppressing vagrancy. Just possibly too, Smith himself, with his Roman law interests, his interest in the economic situation, his influence on Somerset, and his membership of the 1558 commission may have been the author of the 1547 act; if so, it says little for his practical ability. The impracticality, indeed, may be a further evidence of Smith's responsibility.[2]

To sum up. The fear of the social consequences of idleness, the increasingly practical attitude to alms-giving, the emphasis on the Christian duty of making the unwilling work, explain the harshness of the vagrancy laws in general. Within the Common Law, the theory of slavery existed, though normally submerged by practical qualifications; it was strong enough to make it possible for Common Lawyers to accept slavery as a solution when, presumably, other measures had failed. Its acceptance by the government may have been due to the influence of radical social reformers, humanists and Civil Lawyers who had little respect for the traditions of the Common Law, a considerable interest, legal or otherwise, in the institutions of the ancient world, and an impatience with the practical difficulties of the real world.[3] The passing of the act becomes in these circumstances readily explicable.

III

Yet to explain the passing of the act, to pick out the features in contemporary beliefs which made it possible, is not to argue that its measures were perfectly normal, and unexceptionable in the sixteenth century. The gulf between what is legislatively possible, and what is practically enforceable exists always; in societies dependent on an amateur magistracy and police force it is, of course, exceptionally wide. How far, then, was the 1547 act enforced?

The 1549 act, as we have seen, declared that the slavery act had in fact been too severe to be enforced.[4] It is, of course, impossible in a case of this sort to prove a negative, especially as under the procedure outlined in the act, it seems unlikely that the fact of a vagrant's enslavement would be entered on quarter-sessions rolls (of which few survive from this period) or on the records of a borough court. Nevertheless, it does seem to be true that the act was not enforced, or at least not widely. Miss Kitty Anderson, on the look-out for references to the act, found none in her intensive examination of London and Hull records for the period. Furthermore, in London at least, there is positive evidence of other

[1] *D.N.B.*

[2] Dewar, *op. cit. passim*, esp. 6–7, 56–7.

[3] This argument does not depend on Maitland's contention that the Civil Law was powerful enough to threaten the existence of the Common Law (*op. cit.*); cp. the criticism by Holdsworth, *op. cit.* IV, 252–93, and Mullinger's evidence that Smith and Somerset's efforts in Cambridge were attempts to revive a moribund subject (*op. cit.* II, 125–38). I merely suggest that Civil Law was particularly highly regarded in Somerset's circle and that this is itself symptomatic of a refusal to be too closely bound by the *status quo*, to be open to new ideas, even if these were eccentric to the normal development of English law.

[4] 3 & 4 Edw. VI, c. 16.

punishments being applied. In July 1548 stocks were set up for the punishment of vagabonds, and cages were ordered for their detention in October. On several occasions within the currency of the act vagabonds were sent to the king's ships.[1] In Lincoln the 1547 regulations about punishing and expelling vagabonds were repeated in February 1548, and the prisons and stocks repaired just before the act was due to come into force.[2] At Norwich on one occasion, in October 1548, two men were 'appoynted to be sette in the stokkes ffor vacabuncy and yf thei ben ffounden or taken begging or loyteryng withoute worke at any tyme hereafter then thei shalbe used accordyng to the Statute';[3] but under the statute they should have been enslaved for their first offence, not for the second. The corporation was obviously reluctant to apply the letter of the law. Indeed, the government itself seems to have been chary about applying the act. No special proclamations were issued to enforce it, as was done with the 1549 act.[4] A circular letter directed to 'certen speciall men' in shires which had lately seen rebellions in September 1549, mentioned that 'many Idle vagaboundes and others leude and sedycyous persons ... do styll loyter and use sedycyous and stubborne talkes reffusing to labor or other wyse occupye themselfes in any honest or vertuous werke'; 'severe punnyshement' was ordered for these incorrigibles, but no mention was made of slavery, and the clear implication is that the punishment was whipping.[5] Moreover, the fact that none of the social commentators of the time seems to have mentioned the act may be taken as further circumstantial evidence that it was not enforced, at least on a wide scale. So, too, may the absence of any mention of the act in any of the rebel complaints in 1549; the rebels may have had a lively dislike of vagrants and beggars themselves, but at least the act was not being systematically used, as it could have been used, by employers to force down wages.[6]

Of course, the enforcement of vagabond legislation was always difficult. The 1536 act had threatened constables with a fine of 5 marks for refusing to mutilate beggars, and two days in the stocks if they refused to whip children.[7] Edward VI in 1551 thought that the 'slake execution of the lawes' was due to 'bribery or foolish pitey'.[8] Edward Hext was to complain in 1596 that due

[1] Kitty Anderson, 'The Treatment of Vagrancy and the Relief of the Poor and Destitute in the Tudor Period... in London to 1552 and Hull to 1576' (unpublished London Ph.D. thesis, 1933), pp. 216–31 (esp. pp. 223–6) and 262–5.

[2] J. W. F. Hill, *op. cit.* pp. 66–7.

[3] Norfolk and Norwich Record Office; Norwich Mayor's Court Book, 1540–9, p. 522. It is stated in William Hudson and J. C. Tingey (eds.) *Records of the City of Norwich* (2 vols. 1906–10), II, xcix, that the 1547 act was enforced in Elizabeth's reign, but the evidence cited (pp. 177, 179, 357) refers to Houses of Correction or to gaol.

[4] Hughes and Larkin, *op. cit.* nos. 356, 371. The editors wrongly imply that no. 356 orders the enforcement of the 1547 act, but this had been repealed in its entirety by the date of the proclamation (7 May 1550). The 1547 act carried its own provisions for its reading out, twice a year, at quarter-sessions. But if the government had wished to enforce it, additional special proclamations would presumably have been issued.

[5] P.R.O. S.P. Dom. Edw. VI, vol. 8, fos. 121–2.

[6] A hostile account of the western rebels held that it was instigated by thieves, vagabonds and priests, but this can hardly be taken seriously; F. Rose-Troup, *The Western Rebellion of 1549* (1913), pp. 485–94, esp. pp. 486, 488.

[7] 27 Hen. VIII, c. 25.

[8] *Literary Remains*, II, 484–5.

punishment for theft was not exacted because 'the simple Cuntryman and woman ... are of opynyon that they wold not procure a mans death for all the goods yn the world'.[1] Nevertheless such punishments could be and were enforced at times, even if less whole-heartedly than Parliament intended. Slavery, on the other hand, seems to have been totally unacceptable; at least, when the M.P. returned home from considering the vagabond as a stereotyped image, to be faced with concrete examples in his parish.

As Froude said, it was the name that rankled, rather than the actual condition of slavery. Life in a house of correction must in fact have been very like the slavery envisaged in 1547; unless the justices were exceptionally vigilant, the inmates must have been as exposed to the arbitrary will of the overseer as the slave to his master's. Moreover, the 1572 act ordered vagrants over 14 to be whipped and burned through the ear unless they took service with an 'honest person' for a year; and to be hanged for the second offence.[2] This could produce cases like that of Joan Wynstone who, having evidently fled from her husband Thomas Wynstone, found herself bound to him as his servant. On fleeing again she was hanged.[3] Apprenticeship, as we have seen, could be reckoned a form of slavery, though with the right of appeal by the apprentice to the magistrates. The servile nature of apprenticeship must have been especially apparent when the apprentice was a pauper child. Vagrants were sent as indentured servants or as apprentices to the West Indies or America in the seventeenth century.[4] But slavery as a formal concept was a different matter. To admit to slavery was bad for national prestige. Thus Harrison wrongly but patriotically stated that no slave or bondman existed in England, and that as soon as a slave set foot on English soil, he was free.[5] Smith, as we have seen, writing to impress the French with the virtues of England, was equally anxious to minimize the incidence of villeinage. He went on to congratulate England on the way in which it combined strict laws against idleness with personal freedom; 'necessitie and want of bondmen hath made men to use free men as bounden to all servile services; but yet more liberally and freely and with a more equalitie than in the time of gentilitie [the ancient world] slaves and bondemen were woont to be used'.[6] The same prejudice existed in France; the *Parlement* of Guienne declared in 1571 that 'la France, mère de la liberté ne permet aucun esclave'.[7] In the same way villeinage was falling into disrepute. Fitzherbert, for instance, held that it was unchristian 'to have any Christen man bounden to an other, and to have the rule of his body landes and goodes, that his wyfe, chyldren, and servantes have laboured

[1] Tawney and Power, II, 341.
[2] 14 Eliz. c. 5.
[3] R. C. Jeaffreson (ed.), *Middlesex County Records* (1886), pp. lii-liii.
[4] Leonard, *op. cit.* pp. 229–30.
[5] *Description of England*, quoted by E. P. Cheyney, 'The Disappearance of English Serfdom' (*Eng. Hist. Rev.* XV (1900), 20–37), p. 24.
[6] *Op. cit.* 139, c. 8; for the book's patriotic purpose, see Dewar, *op. cit.* pp. 110–14. Cp. Pollard, *Protector Somerset*, p. 75, on Smith's erroneous denial of the use of torture in England.
[7] C. Verlinden, *L'Esclavage dans l'Europe médiévale* (Bruges, 1955), I, 851.

for all their life tyme, to be so taken, as it were extorcion or bribery'.[1] Manumission, often carried out for the profits it brought in, could be justified in terms of the law of nature and of common brotherhood in Christ.[2] Slavery, of fellow citizens at least, was a foreign concept in the sixteenth century.[3]

Doubtless, moral scruples could have been overcome if slavery had been practical and profitable. As far as the employment of slaves by individuals was concerned, this could hardly be expected. Slave-ownership, after all, involves a specialized technique. It was said of the American South that a slave 'is trusted as little as possible to use his own discretion, and it is taken for granted that he will never do anything desired of him that he dares avoid'.[4] 'Half the population of the South is employed in seeing that the other half do their work, and they who do work, accomplish half of what they might do under a better system', remarked another observer.[5] These complaints as applied to a society based on slavery may well be (from a master's point of view) unduly pessimistic.[6] But in Tudor England, dealing with a single slave or with a small number, and those taken from the social groups who were, by definition, least ready to work, slavery would have been utterly uneconomic; the constant driving, the continuous need to check the work done, the impossibility of trusting the slave in anything, the ease of flight, the difficulty of recapture, easily outweigh any advantage which might have accrued from 'cheap labour'. Only 'public' forced labour either by the state on public works, as envisaged in the 1535 scheme for the repair of harbours, the building of roads and fortresses, and the improvement of waterways, or by municipalities, as enjoined as an alternative in 1547, was really practicable. Even here, in the public sphere, a proper administrative system is needed to carry through the scheme; as with the specially established government department of the 1535 draft, or the local administration which was created for the poor-law under the Elizabethan legislation.[7] Even then, of course, the application of forced labour varied a good deal from time to time and place to place. The 1547 act was almost bound to fail; it attempted to deal with a problem by threatening punishments of unprecedented ferocity, without producing the administrative machinery to make its threats credible.

[1] Quoted by E. P. Cheyney, *op. cit.* pp. 23–4. Cp. also the doubts expressed in *Doctor and Student* (pp. 153–4). Villeinage had, of course, its defenders, and, in time, some regretted that it had disappeared; cp. John Smyth of Nybley (quoted by Savine, *op. cit.* pp. 244–5) who believed that the disappearance of villeinage had produced vagabondage, 'a rabble of rogues, cutpurses, and like mischievous men, slaves in nature, though not in law'.

[2] Savine, *op. cit.* pp. 268–71.

[3] I have no solution to the problem of who were the 'slaves' in Lord Derby's household in 1569 (*Stanley Papers*, Pt. II (Chetham Soc. 1843), p. 9). Savine's suggestion (*op. cit.* p. 250) that they were Negroes seems the most likely, especially as the date is 1569, not 1558 as Savine states.

[4] Quoted by K. M. Stampp, *The Peculiar Institution* (New York, 1956), p. 148. (I owe this point to my wife, K. M. Davies.)

[5] *Ibid.* p. 399.

[6] *Ibid.* chap. IX.

[7] Elton, 'Early Tudor Poor Law', p. 67; Leonard, *op. cit.* chaps. VIII and IX.

IV

What, then, does the existence of the act tell us about the attitudes and policies of Somerset's government? This is a fair question, even though the act was probably not in its origin a government measure; the untidiness of its arrangements, and its failure to tackle the very complicated problem of the legal status of the slave, argue that it was not. So does its parliamentary history. But the act was adopted by the government, and Somerset must therefore accept responsibility for it. In itself, of course, the act was not inconsistent with Somerset's general attitude. His sympathy with the commons may well have been genuine. But it was shown by a greater vigour in pursuing the ends which his predecessors had set before themselves rather than by a change in the ends themselves. Severity towards the wilfully unemployed was the natural corollary of an attempt to banish involuntary 'idleness' by checking enclosure, and by conversion from pasture to tillage. Even so, two criticisms can be made of the act. First, its utter failure to institute an effective system of poor relief; it tinkered with details of the Henrician system, but failed to tackle the principal cause of its inadequacy, its reliance on voluntary contribution to the poor funds. Secondly, its sheer impracticality; those responsible seem not to have considered whether slavery could or would be adopted by employers, nor did they establish the necessary administrative arrangements for the public use of forced labour. The notion of 'slavery' seems to have been introduced as a desperate last resort, with no thought for what was feasible (not to mention desirable) in sixteenth-century England. Sheer incompetence, indeed, is perhaps the most telling charge against Somerset and those who advised him on social policy.

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